

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

ERIC SAAYBE, #22011-078

VS.

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 4:16cv895
CRIMINAL ACTION NO. 4:12cr181(35)

ORDER OF DISMISSAL

The above-entitled and numbered civil action was referred to United States Magistrate Judge Christine A. Nowak, who issued a Report and Recommendation concluding that the motion to vacate, set aside, or correct sentence should be denied and the case dismissed with prejudice. Movant filed objections (Dkt. #12). The Report of the Magistrate Judge, which contains proposed findings of fact and recommendations for the disposition of the case, has been presented for consideration (Dkt. #10). The Report recommends dismissal because Movant failed to timely file his § 2255 motion. In fact, Movant concedes the motion is barred by the statute of limitations as he initially filed a motion to accept his motion out of time (Dkt. #3). After conducting a *de novo* review of the objections raised by Movant to the Report, the Court concludes the objections are without merit.

Movant does not object to the Report's recommendation for dismissal based on his § 2255 motion being time-barred; rather, he objects to the recommendation that a certificate of appealability be denied. Movant asserts that a certificate of appealability is not required when appealing the denial of a Rule 60(b) motion. However, Movant did not file a Rule 60(b) motion pursuant to Fed. R. Civ. P. 60(b) – he filed a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Accordingly, Movant's objections are inapplicable, and are without merit. Movant fails to make any

further objections to the Report. Accordingly, he is barred, except upon grounds of plain error, from appellate review of those proposed factual findings and legal conclusions that have been accepted and adopted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

Having conducted a *de novo* review of Movant's objections, the Court concludes that the findings and conclusions of the Magistrate Judge are correct, and adopts the same as the findings and conclusions of the Court. It is therefore

ORDERED the motion to vacate, set aside, or correct sentence is **DENIED** and Movant's case is **DISMISSED** with prejudice. A certificate of appealability is **DENIED**. It is also

ORDERED Movant's motion for the Court to accept his § 2255 motion out of time (Dkt. #3) is **DENIED**. Finally, it is

ORDERED that all motions by either party not previously ruled on are hereby **DENIED**.

SIGNED this 18th day of August, 2017.


AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE